

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

LISA BERSHAN,
BARRY SCHWARTZ, and
JOEL MARGULIES

Defendants.

USDC SDNY
DOCUMENT
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DOC #:
DATE FILED: OCT 13 2017

INDICTMENT

17 CRIM 638

COUNT ONE

(Conspiracy to Commit Securities Fraud and Wire Fraud)

The Grand Jury charges:

1. From at least in or about August 2015 through in or about August 2017, in the Southern District of New York and elsewhere, LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5; and wire fraud, in violation of Title 18, United States Code, Section 1343.

2. It was a part and object of the conspiracy that LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, and others known and unknown, willfully and

JUDGE SWEET

knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

3. It was a further part and object of the conspiracy that LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings,

signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

4. In furtherance of the conspiracy and to effect its illegal objects, LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about August 2015, BERSHAN and MARGULIES sent an individual ("Victim-1") emails soliciting an investment in a company that later became known as Starship Snacks Corp. ("Starship"). These emails contained, among other things, an agreement purporting to guarantee Victim-1's investment against any loss.

b. In or about October 2015, BERSHAN and MARGULIES sent an email and a letter to investors in Starship stating, in substance and in part, that Starship was likely to be acquired by Monster Beverage Corp. ("Monster") in a share-for-share exchange that would be extremely lucrative for Starship's investors.

c. In or about January 2016, BERSHAN and SCHWARTZ opened two bank accounts in the name of "Starship Snacks Corp.," at a bank located in the Southern District of New

York. Investors were subsequently directed to, and did, deposit and/or transfer funds into these accounts.

d. In or about March 2016, MARGULIES sent an email to investors, stating, in substance and in part, that Starship was close to completing a deal with Monster.

e. In or about October 2016, SCHWARTZ participated in a conference call with investors, during which SCHWARTZ falsely stated that Starship had received an offer to partner with or be acquired by Monster, that Starship had rejected the offer, and that Starship was pursuing alternative arrangements with Monster and The Coca-Cola Company.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Securities Fraud)

The Grand Jury further charges:

5. From at least in or about August 2015 through in or about August 2017 in the Southern District of New York and elsewhere, LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal

Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit, BERSHAN, SCHWARTZ, and MARGULIES caused investors to purchase stock in Starship through materially false representations, and subsequently misappropriated investor funds for their own use.

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.)

COUNT THREE

(Wire Fraud)

The Grand Jury further charges:

6. From at least in or about August 2015 through in or about August 2017, in the Southern District of New York and elsewhere, LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television

communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, BERSHAN, SCHWARTZ, and MARGULIES caused investors to purchase stock in Starship through materially false representations, including representations submitted through email, and subsequently misappropriated investor funds for their own use.

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATION

7. As the result of committing one or more of the foregoing offenses alleged in Counts One through Three of this Indictment, LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Three of this Indictment.

SUBSTITUTE ASSET PROVISION

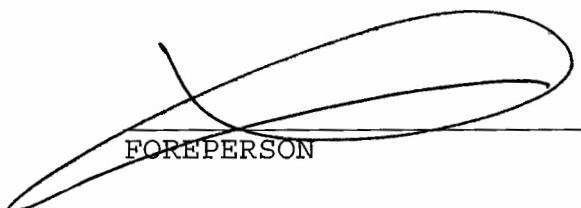
8. If any of the forfeitable property described above, as a result of any act or omission of LISA BERSHAN, BARRY SCHWARTZ, and JOEL MARGULIES, the defendants:

- a. cannot be located upon the exercise of due diligence;

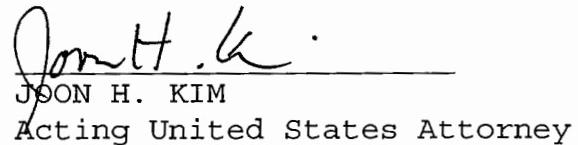
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)



FOREPERSON



JOON H. KIM
Acting United States Attorney

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SOUTHERN DISTRICT OF NEW YORK

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INDICTMENT

17 Cr.

(18 U.S.C. §§ 2, 371, 981, 1343;
15 U.S.C. §§ 78j(b) & 78ff;
21 U.S.C. § 853; 28 U.S.C. § 2461;
17 C.F.R. §§ 240.10b-5.)

JOON H. KIM
Acting United States Attorney

A TRUE BILL

Foreperson.

10/13/17

*Indictment Filed
Wheel A*

Judge Sweet

*Judge Park
USMS*

10/13/2017
10/13/2017